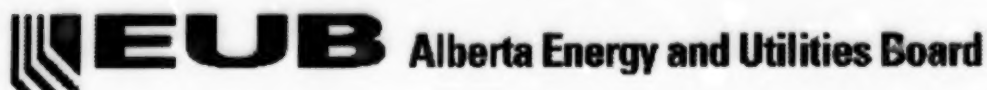


NOTE:

The EUB is updating publications that pre-dated the amalgamation of the Energy Resources Conservation Board (ERCB) and the Public Utilities Board (PUB) in 1995. The Alberta Energy and Utilities Board (EUB) takes the place of any references to the ERCB, PUB, or their full names.

Major revisions to EUB documents are occurring as part of regulatory re-engineering and streamlining initiatives. In some cases, older publications are withdrawn or integrated into new ones. This document has not yet gone through the revision process. Please consult the latests Acts and Regulations to interpret and apply legal requirements.

To find a current contact name for this publication, please call 297-8311.

**GUIDE 31**

GUIDELINES RESPECTING APPLICATIONS FOR LOCAL INTERVENERS' COSTS AWARDS

February 1994

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1 INTRODUCTION

In 1978 the Alberta Legislature amended the *Energy Resources Conservation Act* (the Act) and enacted the Local Interveners' Costs Regulation (the Regulation) to permit persons who might be affected by proposed energy projects to be reimbursed for reasonable costs incurred in making an intervention at a public hearing convened by the Energy Resources Conservation Board (the Board). Such costs are normally paid by the applicant whose application caused the public hearing. Experience during this period has shown that interveners need:

- (a) a reasonable degree of certainty as to what costs will be judged acceptable for reimbursement;
- (b) a realistic and up-to-date indication of acceptable costs; and
- (c) certainty with respect to procedure.

In order to meet these needs, the Regulation has been amended and these guidelines developed to assist local interveners who wish to apply for an award of costs.

2 QUALIFYING FOR COSTS

Section 31 of the Act allows the Board to make an award of costs only to a "local intervener", which has been defined as:

A person

- (1) occupying, or
- (2) entitled to occupy, or
- (3) having an interest in

land which may be directly and adversely affected by a decision of the Board concerning the matter before it.

"Local Intervener" includes a group or association of local interveners, but does not include a person or group who business includes trading, transportation or recovery of any energy resource. In cases, where a group of interveners have similar interests, the Board would encourage these interveners to form a group.

3 ALTERNATIVES FOR INTERVENERS

Where a local intervener has conducted that he or she might be directly and adversely affected by a

proposed energy project, and wishes to submit an intervention at a public hearing, the following alternatives may be considered.

- (a) Preparation and presentation of the intervention entirely by the local intervener.
- (b) Joining forces with other local interveners to form a group or association with the objective of preparing and presenting a joint intervention with a common purpose.
- (c) Engaging the services of a solicitor or other third party to assist in the preparation and presentation of the intervention at the hearing.

Where in the circumstances it is reasonable to do so, any of these alternatives are acceptable to the Board. Based on its experience, the Board has found that in many instances the first two alternatives are fully effective, however, in situations where the application or subject matter of the intervention may be complex, expert services may be advisable. In such cases, a solicitor may be in a better position to organize the presentation of a "case" to the Board at the hearing and, where necessary, to seek the services of the appropriate experts.

4 RECOVERABLE COSTS

Based on its experience over the last few years, the Board has adopted the following criteria with respect to eligibility of costs. Costs have to be:

- (a) Reasonable and directly and necessarily related to a Board proceeding – Appendix A (attached) discusses reasonable costs and provides examples.
 - (b) Actual expenditures incurred and paid out of the pocket of the intervener, but in special cases the Board is prepared to recognize to some degree the special individual efforts made by persons in either the preparation or presentation of their submission. Appendix B (attached) summarizes particular types of costs which may be awarded but for which there has been no actual out-of-pocket expense.
 - (c) Properly document – Section 7 of this Guide discusses details respecting documentation. Ensure all receipts are retained for inclusion in the claim for local interveners' costs.
-

5 TYPICAL TYPES OF COSTS AWARDS

Over the last several years the Board has granted a wide variety of costs awards ranging from about \$100.00 for very simple interventions to about \$1 000.00 for many of the normal interventions without expert help. In a few exceptional cases costs have ranged up to \$50 000.00 for major interventions on behalf of a substantial number of interveners. In a large number of cases interveners formed groups or associations to present a common intervention, sometimes engaging a solicitor for assistance. In some instances only one or two persons were affected by a proposed project, but in other cases hundreds were affected.

In summary, there has been wide variation in the situations encountered and consequently the awards

have varied considerably. Copies of Cost Orders issued to date are available for public examination in the ERCB's Information Services Area.

6 MAKING AN APPLICATION FOR AN AWARD OF COSTS

A person planning to claim costs should document costs from the moment planning of the intervention starts. **Within 30 days of the close of the ERCB hearing**, the claim for an award of costs, including all relevant and supporting receipts, invoices, accounts and other documentation, must be submitted to the Board and to the Applicant who initiated the proceeding before the Board. The claim must be submitted in the form prescribed by the Regulation. A copy of the form is provided in Appendix C (attached). Claims not received within 30 days of the close of the hearing will not be considered by the Board unless very special circumstances exist.

A person planning to intervene and file a submission regarding an application before the Board, should keep a record and details of all expenditures, including receipts, related to the preparation and presentation of the submission at the hearing, whether the intervener is acting on his or her own behalf, in a group or with the assistance of a solicitor. The solicitor's account should include a detailed listing of what services were performed for the intervener as well as the amount of time spent carrying out each activity. Copies of receipts for all disbursements should also be included where possible.

It will be the obligation of the person claiming for an award of costs to support his or her claim and to establish that the costs claimed are reasonable and were directly and necessarily related to the matter in which the local intervener intervened.

7 PROCESSING THE CLAIM

Costs claims, including all receipts and accounts and other necessary documentation, are required to be submitted to the Board and directly to the Applicant within 30 days of the closing of a hearing. Claims are checked to ensure that adequate supporting information has been provided.

The procedure is designed to expedite processing and to be fair in that it allows each party an opportunity to comment to the Board before the Board decides an award. The Applicant must, if it wishes to comment on the claim, provide such comments to the Board and the local intervener within 14 days of the receipt of the claim. In turn, if the local intervener wishes to reply to those comments, such reply must be provided to the Board and the Applicant within 14 days of the receipt of the Applicant's comments. After that time, the Board will make its decision, whether or not comment and reply have been received.

When the costs claim is complete, including all supporting documentation, and the time for providing comments and replies has expired, the Board will consider the claim in light of the particular application and render its decision as soon as possible thereafter. If an award is made, the Board issues an order which sets out

- i) the amount of the award,
- ii) who shall pay it,

iii) to whom the payment shall be made,

as well as a letter summarizing the breakdown of the award and the reasons for it.

Appendix D (attached) details the steps for making a claim and sets out the time requirements for the filing of:

- i) the claim;
 - ii) comments to the claim; and
 - iii) replies to the comments.
-

8 ADVANCE OF COSTS

In exceptional cases where it can be shown that an advance payment of the expenditures to be incurred in preparing and presenting a submission is essential, some portion of the total expected costs may be paid before the hearing is held. In these special cases where the Board advances funds, such funds must be justified later as part of the costs award or repaid to the Board.

A request for an advance of costs should include an explanation as to the need for the advance of funds, the proposed work to be carried out by the intervener or someone hired to act on behalf of the intervener, as well as a budget of the proposed expenditures.

9 QUESTIONS

The Board recognizes that for a local intervener who has not previously been affected by a proposed energy project, there may be questions about the Regulation. Assistance and information may be obtained by writing or calling the Board's Legal Department at:

640 – 5 Avenue SW
Calgary, Alberta
T2P 3G4

Telephone Number: 297-8259

APPENDIX A

REASONABLE COSTS

Before reviewing specific types of costs for which a costs award may be made, it is appropriate to consider the reasonableness of costs. This section provides illustrations of reasonableness, but does not prejudice specific cases as each of these will be decided on its own merits.

Costs awards are intended to cover those costs which, in the particular circumstances, are reasonable and which are directly and necessarily related to **efficiently and economically** preparing and presenting a submission. Normal business costs, compensation, cost of negotiation, and costs related to matters outside the jurisdiction of the Board may be reasonable in amount, but are, in law, excluded from awards.

Costs awarded to an intervener are normally paid by the applicant whose proposed development caused a hearing before the Board. An Applicant expects to pay no more for organization, preparation, and presentation of an intervener's submission than is warranted by the impact, size and complexity of the proposed development. The intervener decides the scope of a submission, the complexity and associated specialized studies, if any, and hence the total cost; but the costs award will reflect what is judged by the Board to be reasonable and necessary in light of the particular circumstances. For example, a reasonable cost incurred would be for a submission relevant to the Applicant's proposal, related to matters specific to that proposal and not of a general nature, not extensively duplicating material provided in the application, making economical use of witnesses and experts, and consisting of material that the intervener or witness were familiar with and had prepared.

A reasonable submission for cost purposes would **not** include: arguments about things not being considered, or not related to the application; arguments about matters already decided, e.g. arguing the need for a project when the need has been previously established; or arguments about Government policy or Legislative changes that should more properly be placed before the Government or a Member of the Legislative Assembly.

Further examples of costs that might **not** be considered reasonable include:

- A study on a province-wide basis of an industry, such as the petrochemical industry, when the hearing is dealing with a particular plant.(*)
- A submission that a particular project should be denied because a policy or a law should be in place which would affect the project, when in fact no such policy exists.(*) The Board must work within the existing Legislative framework at the time of considering an application.
- A study relating to the target areas for all wells in Alberta at a hearing into an application for a particular well.(*) However, a study related to a particular well, its alternative locations and impacts would probably be reasonable for costs purposes.
- Collection of a large volume of material, published or otherwise, with which the intervener is not familiar and which cannot be properly supported or clarified by witnesses at a hearing.
- Complaints about problems of improper clean-up of a well site in one part of Alberta when dealing with a well licence application elsewhere by a different company. (Complaints should be registered directly with the ERCB or the Conservation and Reclamation Council as soon as a problem becomes apparent).
- Studies and expert consultation beyond the impact of a proposed project. For example, a well not producing hydrogen sulphide would not warrant evaluation of the impact of sour gas production.
- Studies carried out on behalf of an intervener for other purposes, such as land-use or subdivision planning or evaluation, or property appraisal for compensation or sale.
- Costs related to replacing solicitors or experts after preparation of a submission is started.
- Costs related to more than one witness or expert dealing with the same or essentially similar material for the same intervener.
- Costs that clearly exceed those normally paid for goods, materials, or services.
- Costs relating to the preparation of the Claim for an Award of Costs by Local Interveners.

* The study or submission may be reasonable for representation to Government, or even to the Board who can consider it or bring it to the attention of Government, but may not be a reasonable cost to the applicant proposing a specific project.

DISCRETION OF THE ERCB IN MAKING COSTS AWARDS

It must be remembered that it is the discretion of the Board to determine whether it was reasonable to incur a particular type of cost and whether the amount of the particular cost is reasonable. There are no firm guidelines which may be established to say in each case what type of costs are reasonable and whether the corresponding amounts are also reasonable. These two matters must be assessed in the context of the particular proceeding for which the claim is made.

APPENDIX B

TYPES OF COSTS THAT MAY BE AWARDED

The following guidelines do not prejudice any application for costs and, under special circumstances, exceptions will be allowed. However, to provide the reasonable degree of certainty mentioned in the Introduction, specific cases that generally apply have been set out in this Appendix. Sound argument and exceptional circumstances must be demonstrated before the Board is likely to decrease or increase the numbers or dollar amounts stated.

COSTS FOR AN INDIVIDUAL INTERVENER

Costs of Preparing a Submission by an Intervener

Letters, and simple submissions that take a few hours to prepare, are often adequate for an intervener's purposes and are not costly. However, an intervener who personally prepares a substantial submission without expert help may, depending upon the complexity of the submission, receive an honorarium of \$100, \$300, or \$500. In very exceptional cases, and where the necessary preparation time would clearly exceed 50 hours, honoraria in excess of \$500 may be considered. There must of course clearly be a need for any such substantial intervention (see Appendix A).

If a more efficient submission would result, an intervener may choose to be assisted by a solicitor, or an expert consultant. Depending on who does most of the work of preparing the submission, at least part of the solicitor or expert fees will probably qualify for a costs award (see COSTS OF A SOLICITOR).

Reasonable expenses of an intervener related to preparing a submission may be allowed, particularly if a complex submission is necessary. Such expenses could include stationery, postage, telephone calls, photocopying, purchase of necessary documents and typing of the submission. Necessary documents might include parts of transcripts of previous relevant public hearings, but normally this is not necessary. Also, it is unnecessary to duplicate material provided by the Applicant and available from it in its application.

Costs of Appearing at a Public Hearing

Except when an intervener is represented by someone else and takes no active part in a public hearing,

an intervener can normally recover some of the costs of appearing ⁽¹⁾ at a hearing. An intervener would not receive a witness fee, but could claim an honorarium of \$50 for each half day ⁽²⁾ actually present at a hearing to listen to the evidence of others, question others, present an intervention or confer with the intervener's own solicitor or expert.

⁽¹⁾ Appearing in support of an intervention refers to coming to the front when so requested by the Chairman of the Hearing and answering any questions about the intervention.

⁽²⁾ The noon break separates the two halves of the day of a public hearing.

In special cases, where an actual loss of wages has occurred and has been adequately documented, part or all of the wage loss may be allowed as a cost instead of the honorarium described above.

Expenses of an intervener actively involved in a public hearing may include:

- necessary travel by an economic means of public transportation or at the current automobile rate for distances actually travelled;
- food expenses for up to three normal meals per day; and
- lodging at normal motel or hotel rates when it is necessary to stay until the next day.

COSTS FOR A GROUP OF INTERVENERS

As noted earlier, the formation of a group of interveners with a common purpose who pool their resources and effort to present a group intervention is encouraged. The comments with respect to time and expenses of an individual intervener apply to such a group of interveners except as noted below.

Costs of Forming a Group

Some complex applications, or applications for developments that would cover a large land area, may affect a large group of people and these people might logically form a large group with a common purpose. In such instances, the organization of the group may require considerable time, effort, and expense on the part of those few people who organize, coordinate, and represent the group.

Depending upon the size of the group and the problems inherent in organizing it, one to four organizers may receive honoraria of \$100, \$300, or \$500. Other than the honoraria, expenses of organizing will not normally be considered for a costs claim, but mileage, meals, or rental of meeting rooms should be documented to indicate the amount of activity necessary to organize the group. In exceptional cases involving much time and a very large number of people, some expenses may be considered in addition to the honoraria.

Costs of Preparing a Group Submission

When a substantial submission is prepared on behalf of a large group of interveners, up to four people actually preparing the submission without expert help may qualify for honoraria for \$100, \$300, or \$500 for personal time and expenses. In very exceptional cases, and where the necessary preparation time would clearly exceed 50 hours each for any or all of the one to four people involved, honoraria in excess of \$500 may be considered. There must clearly be a need for any such substantial intervention (see Appendix A). If an efficient submission would result, interveners may choose to be assisted by a solicitor

or an expert consultant. Depending on who does most of the work of preparing the submission, the interveners may not qualify for honoraria, but at least part of the solicitor or expert fees will probably qualify for a costs award.

Reasonable expenses related to preparing a submission may be allowed, particularly if a complex submission is necessary. Such expenses could include stationery, postage, telephone calls, photocopying, purchase of necessary documents and typing of the submission. Necessary documents might include parts of transcripts of previous relevant public hearings, but normally this is not necessary. Also, it is unnecessary to duplicate material provided by the Applicant and available from it in its application.

Cost of Appearing at a Public Hearing

If a number of interveners form a group to present a submission **without** the assistance of a solicitor, one to four who are necessary to represent the group and present the submission may each receive honoraria of \$50 for each half day they are actually present at the hearing. The group may present a panel of up to six, including the representatives, necessary to appear in support of their submission, and each may receive \$50 for each half day of actual appearance.

If a number of interveners form a group to present a submission **with** the assistance of a solicitor, two representatives of the group may each receive honoraria of \$50 for each half day actually present at the hearing to work with the solicitor, but not appearing in support of their submission.

If the solicitor presents a panel of interveners, the two representatives and up to four others may each receive \$50 for each half day during which it is necessary for them to actually appear in support of their submission.

COSTS OF A SOLICITOR

An intervener may choose to be assisted by a solicitor when preparing and presenting a submission to a public hearing. As noted previously, whoever does most of the work of preparing and presenting a submission is most likely to qualify for a costs award.

The personal services of a solicitor, as billed to the intervener client for preparation and presentation of a submission and representation of the intervener at a public hearing, may qualify for a costs award at the hourly rate currently in effect and being used to bill clients. The "disbursements" in the solicitor-client account may also qualify.

Any expert fees may be included with disbursements but must include proper documentation to allow consideration as described under Section 6 of the Guidelines.

Hearing expenses for three normal meals per day, reasonable lodging and economical public transportation or automobile travel at the current rate may qualify for a cost award.

Costs claims should be supported by a copy of the client account and sufficient detail to demonstrate that all items billed were necessary and related to the application or proceeding.

COSTS OF AN EXPERT

An intervener may choose to be assisted by one or more experts when preparing and presenting a submission to a public hearing. Those experts may be registered professionals, may carry on a consulting business or may be expert in a certain field due to practical experience and/or specialized training.

For cost purposes, one expert should not duplicate the speciality and services of another for the same intervener, and an expert's assistance with a submission must be related to that expert's area of special knowledge. An expert may appear as an expert witness to support part of a submission that was prepared by that expert. Normally, an expert need not attend the whole hearing.

Personal service preparing a submission, or appearing as a witness to support it, should be at the hourly rate currently in effect and being used to bill clients. Personal service by an expert who does not normally engage in services for a fee should be at the current hourly rate or wage for someone trained and employed in the area of work that is of assistance to the intervener, e.g., irrigation technician, district agriculturist, or someone with knowledge in a special area of farming or ranching, etc. Personal services already compensated by others in the form of hourly employment or regular salary would not be compensated by a costs award.

Actual costs for associated services such as typing or drafting may qualify for a cost award if properly documented with a copy of the solicitor-client account and sufficient detail to demonstrate that all items billed were necessary and related to the application or proceeding.

Hearing expenses, for economical public transportation or automobile travel at the current rate, for three normal meals per day, and for reasonable lodging at normal motel or hotel rates, may qualify for costs awards.

COSTS OF OTHER WITNESSES

An intervener may find it necessary to support a submission with the testimony of a witness who has some specially relevant knowledge, but who is neither an intervener nor an expert. The attendance at a hearing of such a witness may qualify for a witness fee of \$50 for each half day necessarily and actually present at a hearing to be available to appear as a witness on behalf of an intervener. Normally, such a witness would not attend the whole hearing.

Hearing expenses, as previously described, may apply to a witness.

APPENDIX C

CLAIM FOR AN AWARD OF COSTS BY LOCAL INTERVENERS

ERCB Application No. _____

By Industry Applicant: _____

Hearing Held at (location): _____

From (date): _____

To (date): _____

Name of Local Intervener(s) (attach list if necessary)	Land Owned or Occupied by Local Intervener (legal land description)

If Group Formed, Name of Group: _____

Name of Intervener or Group Representative: _____

Street Address & Local Telephone Number for Local Intervener or Group: _____

Has a copy of this application with supporting documentation been sent to the Applicant or its Solicitor:

Yes: _____

No: _____

FOR FURTHER INSTRUCTIONS ON COMPLETING THIS FORM AND MAKING APPLICATION FOR AN AWARD OF COSTS, PLEASE SEE ERCB GUIDE G-31, *GUIDELINES RESPECTING APPLICATIONS FOR LOCAL INTERVENERS' COSTS AWARDS, IN PARTICULAR APPENDIX B.*

Details of Claim

1. INTERVENER

Honoraria

Expenses (attach receipts)

(a) Forming a group

* _____

(b) Preparing a submission

* _____

(c) Attending a hearing

_____ ½ days x \$50 =

SUB TOTALS

A _____

B _____

TOTAL PERSONAL CLAIM OF INTERVENERS

A + B = _____
(Line 1)

* Normally the total of these two amounts will not exceed \$500.00

- See Appendix B - Page 13

3. EXPERT/CONSULTANT

Name: _____

Address: _____

TOTAL FEES & DISBURSEMENTS

(Attach Account(s))

Breakdown of Account(s):

(a) Preparation of submission/report for hearing, etc.

_____ hrs x \$ _____ /hr = _____

(b) Attendance at hearing (if applicable)

_____ hrs x \$ _____ /hr = _____

(c) Costs of drafting, secretarial service, etc.

(if applicable, attach a separate breakdown)

_____ hrs x \$ _____ /hr = _____

(d) Total Disbursements (attached receipts)

= _____

TOTAL CLAIM RESPECTING EXPERT/ CONSULTANT ACCOUNT(S)

(line 3)

4. **WITNESS FEES** (For persons who necessarily appeared at a hearing to give evidence, but does not apply to persons who are interveners and are making a claim under item 1(c)).

Breakdown of Witness Fees:

(a) Attendance upon a Solicitor (if applicable):

_____ witness(es) x \$50 = _____

(b) Attendance at a hearing to give evidence:

_____ witness(es) x ½ days x \$50 = _____

_____ hrs x \$ _____ /hr = _____

TOTAL CLAIM RESPECTING WITNESS(ES) ACCOUNTS

(line 4)

5. **SUMMARY OF AMOUNT CLAIMED**

Intervener(s)

(from line 1)

Solicitor

(from line 2) +

Expert(s)

(from line 3) +

Witness(es)

(from line 4) +

TOTAL AMOUNT OF THIS CLAIM

Amount of Advance (if applicable)

PLEASE ATTACH SUPPORTING DOCUMENTS

Upon
completion
of this
form,
please
send
form
and
copies
of
supporting
documents
directly
to:

- (1) Energy Resources Conservation Board
Legal Department
14th Floor
640 - 5 Avenue SW
Calgary, Alberta
T2P 3G4

- (2) The Solicitor for the Applicant, if any, or to the Applicant at its business address.

APPENDIX D**MAKING A CLAIM**

1. Fill in the necessary and relevant details on the Claim for an Award of Costs by Interveners Form (the Form).

2. Provide as attachments to the Form any additional information that may be required to complete the Form.
3. Enclose with the Form and attachments all relevant and supporting receipts, invoices, accounts, and other documents evidencing expenses incurred.
4. Where an expense is not self-explanatory, enclose an explanation of the expense.
5. Where a request is being made for the Board to exercise its discretion to award an honorarium, the reasons for such a request should be clearly set out.
6. When all the information, including the details required in Steps 1 to 5 is complete, the whole package **must** be provided to both the Board:

640 – 5 Avenue SW
Calgary, Alberta
T2P 3G4
Attention: Legal Department

and the applicant, at its mailing address, **no later than 30 days after the subject hearing has closed.**

APPLICANT'S COMMENTS TO CLAIM AND CLAIMANT'S REPLIES TO APPLICANT'S COMMENTS

It is the obligation of the applicant, if he or she wishes to comment on the claim, to directly provide, within 14 days of the receipt of the claim, his or her comments to both the Board and the local intervener.

It is the obligation of the local intervener, if he or she wishes to reply to any comments the applicant may have made, to directly provide, within 14 days of the receipt of the comments, his or her reply to both the Board and the applicant.

APPENDIX E

SECTION 31 – ENERGY RESOURCES CONSERVATION ACT

31. (1) In this section, "local intervener" means a person or a group or association of persons who, in the opinion of the Board,

(a) has an interest in, or

(b) is in actual occupation of or is entitled to occupy

land that is or may be directly and adversely affected by a decision of the Board in or as a result of a proceeding before it, but, unless otherwise authorized by the Board, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource.

(2) On the claim of a local intervener or on the Board's own motion, the Board may subject to terms and conditions it considers appropriate make an award of costs to a local intervener.

(3) Where the Board makes an award of costs under subsection (2), it may determine

(a) the amount of costs that shall be paid to a local intervener, and

(b) the persons liable to pay the award of costs.

(4) The local intervener or a person who is determined by the Board to be liable to pay the costs awarded may request that the Board conduct a review of the award of costs.

(5) Where the Board conducts a review of the award of costs, the Board may

(a) vary the award of costs,

(b) refuse to vary the award of costs, or

(c) deny the award of costs.

(6) If in the Board's opinion it is reasonable to do so, the Board may make an advance of costs to a local intervener and it may direct any terms and conditions for the payment or repayment of the advance by any party to the proceeding that the Board considers appropriate.

(7) The Board may make regulations respecting

(a) the awarding of costs,

(b) the making of advances of costs,

(c) the liability of persons to pay costs, and

(d) the review of costs awarded.

- (8) A certified copy of an award of costs made under this section may be filed in the office of the clerk of the Court of Queen's Bench and, on filing and on payment of any fees prescribed by law, the order shall be entered as a judgement of the Court and may be enforced according to the ordinary procedure for enforcement of a judgement of the Court.

1978 c57 s2;1981 c47 s2;1988 c28 s5

APPENDIX F

ENERGY RESOURCES CONSERVATION ACT

Local Interveners' Costs Regulation

Alta. Regulation 517/82

1. In this regulation,
 - (a) "Act" means the *Energy Resources Conservation Act*;
 - (b) "applicant" means a party, other than the Board, who has by application initiated a proceeding before the Board;
 - (c) "order" means a costs award made pursuant to this regulation.
2.
 - (1) A local intervener who presents an intervention at a hearing convened by the Board may make a claim to the Board for an award in respect of costs that are reasonable and are directly and necessarily related to the preparation and presentation of the intervention.
 - (2) A claim made pursuant to subsection (1) shall be provided to the Board and to the applicant within 30 days after the hearing is closed.
 - (3) Upon receiving a claim made under subsection (1), the Board may make an award of costs to a local intervener in respect of costs that, in the Board's opinion, are reasonable and are directly and necessarily related to the preparation and presentation of the local intervener's intervention.

3. A
claim
made
under
section
2
shall

(a) be set out in the form prescribed by the Board, and

(b) clearly set out the following

i) the name of the local intervener, and where the local intervener is a group, the names of the persons belonging to the group;

ii) the mailing address for the local intervener;

iii) the legal description of the land that the local intervener occupies, is entitled occupy or in which he or she has an interest;

iv) the proceeding in which the intervention was presented;

v) details of the costs, including receipts, invoices, statements, or other documents that are evidence of the expense;

vi) such other information as the Board considers relevant and may require.

4. (1) Within 14 days of the receipt of a claim under section 3, the applicant shall provide to the Board and the local intervener any comments he may have respecting the claim.
- (2) Within 14 days of the receipt of the applicant's comments under subsection (1), the local intervener shall provide to the Board and the applicant any reply he may have respecting the comments of the applicant.
- (3) The Board may, in determining if it will award or deny costs or in determining the amount of costs that should be awarded, have regard to any comments and replies that are obtained under subsections (1) and (2).

5. The
Board
may
deny
a
claim,
in
whole

or in
part

- a) if the Board did not hold a hearing in the proceeding,
- b) if the claim does not comply with the requirements of section 3,
- c) if the Board is not satisfied that the costs were reasonable and directly and necessarily related to the proceeding,
- d) if the Board is not satisfied that the local intervener was in need of legal or technical assistance in the preparation and presentation of their intervention,
- e) if the Board is not satisfied that the intervention was conducted economically,
- f) if, in the opinion of the Board,
 - i) the intervention and its presentation was unnecessary, irrelevant, improper, or intended to delay the proceeding before the Board, or
 - ii) the claim is excessive, having regard to the nature of the proceeding and the intervention,

or

- (g) for any other reason the Board considers appropriate.

- 6. Notwithstanding section 5(a), the Board may, in its discretion and where it considers it appropriate to do so, make

an
award
of
costs
to a
local
intervener
to a
proceeding
where
the
Board
did
not
hold
a
hearing.

7. (1) Subject to subsection (2) and unless the Board otherwise orders, any costs in a proceeding awarded to a local intervener shall be paid by the applicant.
(2) In a proceeding initiated by the Board any costs awarded to a local intervener shall be paid by the Board unless the Board otherwise orders.
(3) The Board may, in making an Order, provide that payment may be made to any person that the local intervener may designate.
8. (1) An order of the Board for the payment of costs shall be served on the local intervener making the claim or his representative, and on the person liable for the payment of costs.
(2) Service of the Order may be effected by sending it by ordinary mail to the mailing address of the local intervener provided to the Board under section 3(b)(ii) and to the last known mailing address of the person liable to pay costs.
(3) The date of service of the Order under subsection (2) shall be deemed to be 72 hours after the date of sending the Order by ordinary mail.
9. (1) If the Board, has made an order, the local intervener for whom the Order was made, or the person liable for the payment of costs, may make a request to the Board to review and vary the Order.
(2) A request to review and vary shall be filed with the Board and the other party to the Order within 30 days of the date of service of the Order.
(3) A request to review and vary an Order shall clearly set out the following:
 - (a) the name of the party requesting the Board to review and vary the Order;
 - (b) the number of the Order;
 - (c) the nature of the variation being sought;
 - (d) the grounds for the request.

10. (1) Within 14 days of the receipt of a request to review and vary an Order made pursuant to section 9, the other party shall provide to the Board and the person making the request any comments he may have respecting the request.
(2) The Board may, in determining whether it will review and vary the Order, have regard to the comments received pursuant to subsection (1).
11. (1) The Board may, in its discretion, either deny the request or conduct the review.
(2) Where the Board conducts the review, it may either affirm its previous Order or vary the Order as it sees fit.
(3) Service of the Board's decision under subsections (1) or (2) may be effected on the parties to the Order in accordance with subsection 9.
12. (1) A request for an advance of funds made pursuant to section 31(6) of the Act shall clearly set out the following:
 - a) the information required under section 3(b)(i);
 - b) the information required under section 3(b)(iii);
 - c) the name of the local intervener's solicitor, if the local intervener is to be represented by counsel;
 - d) the proceeding in which the local intervener proposes to present an intervention;
 - e) a list of expenses that the local intervener reasonably expects to incur in the preparation and presentation of his intervention;
 - f) details as to the nature of the expenses;
 - g) reasons why the advance of funds is required.
- (2) If the Board is satisfied that a local intervener has demonstrated that the advance of funds requested will be necessary prior to the holding of the hearing, and the local intervener has established a need at that time for financial assistance in the preparation and presentation of his intervention, the Board may award an advance of funds to the local intervener in respect of costs which, in the opinion of the Board, are reasonably anticipated to be incurred in the preparation and presentation of the local intervener's intervention.
- (3) If the Board makes an advance of funds under subsection (2) it may make conditions for repayment of the advance to the Board by the local intervener.
- (4) If the Board makes an advance of funds under subsection (2), it may direct a party liable to pay costs to a local intervener to reimburse the Board, in whole or in part, for the funds advanced by the Board, to the local intervener.

13. The
Local
Interveners'
Costs
Regulation
(Alta.
Reg.
435/78
is
repealed).

(AR
517/82)

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